

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SONYA TAYLOR, Administratrix of	:	
The Estate of Devin J. Taylor, and in	:	CIVIL ACTION
Her own Right,	:	NO. 3:05-cv-350J
Plaintiff	:	
	:	
vs.	:	
	:	Judge Gibson
ALTOONA AREA SCHOOL DISTRICT,	:	
ALTOONA AREA SCHOOL BOARD,	:	<u>Document Type:</u>
SUZANNE RITCHEY, CAROL MYERS,	:	DEFENDANTS' REVISED
MICHELLE ADAMS, R.N.,	:	RESPONSE TO PLAINTIFF'S
Defendants	:	AMENDED COMPLAINT
	:	
	:	
	:	
	:	<u>Counsel of Record:</u>
	:	
	:	ANDREWS & BEARD
	:	
	:	David P. Andrews, Esquire
	:	PA I.D. No. 25439
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	:	Roberta Binder Heath, Esquire
	:	PA I.D. No. 50798
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	:	(814) 943-7796

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SONYA TAYLOR, Administratrix of
The Estate of Devin J. Taylor, and in
Her own Right,

Plaintiff

vs.

ALTOONA AREA SCHOOL DISTRICT,
ALTOONA AREA SCHOOL BOARD,
SUZANNE RITCHEY, CAROL MYERS,
MICHELLE ADAMS, R.N.,

Defendants

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CIVIL ACTION
NO. 05-350J

Electronically Filed

**DEFENDANTS' REVISED RESPONSE TO PLAINTIFF'S AMENDED
COMPLAINT WITH AFFIRMATIVE DEFENSES**

AND NOW, come the Defendants, Altoona Area School District, Altoona Area School Board, Suzanne Ritchey, Carol Myers and Michelle Adams, R.N. by and through their counsel of record, Andrews and Beard, and hereby file the following Answer To Plaintiff's Amended Complaint with Affirmative Defenses as follows:

A. INTRODUCTION

1. Denied as stated. The remaining Counts in this action which remain viable are addressed in accordance with the Memorandum, Opinion, and Order of the Court dated August 23, 2007. These remaining Counts are denied as conclusions of law to which all affirmative defenses are applicable.

2. Denied as stated. The remaining Counts in this action which remain viable are addressed in accordance with the Memorandum,

Opinion, and Order of the Court dated August 23, 2007. These remaining Counts are denied as conclusions of law to which all affirmative defenses are applicable.

3. Denied as stated. Paragraph 3 of the Amended Complaint containing conclusions of law to which no responsive pleading is required. By way of further answer, if any response is deemed necessary, it is denied that the Defendant, Altoona Area School District or its agents or employees violated the IDEA or Section 504 of the Rehabilitation Act of 1973 so as to permit the Plaintiffs to recover damages.

4. Denied as stated. The allegations contained in Paragraph 4 of the Amended Complaint contains conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that Defendant the Altoona Area School District or its agents or employees violated the ADA so as to permit the Plaintiff to recover damages in this action.

5. Denied as stated.

6. Paragraph 6 of the Amended Complaint constitutes a conclusion of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that the Defendants the Altoona Area School District or any of its agents or employees violated Section 1983 so as to afford the Plaintiff the opportunity to obtain damages in this action.

B. JURISDICTION

7. Admitted in part; denied in part. It is admitted that the venue was proper because Plaintiffs reside in Blair County and Blair County is where the District and its schools are located. The remainder of the allegations relative to the proper jurisdiction, including subject matter jurisdiction, are denied as stated.

C. PARTIES

8. Admitted upon information and belief.

9. Admitted upon information and belief.

10. Admitted in part; denied in part. It is admitted that the Altoona Area School District is the "District" and the local education agency within the meaning of the IDEA and is a recipient of federal funds. The remainder of the allegations are denied as stated as the IDEA is a statute and consequently, any characterization of same is denied.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied as stated. The allegations concerning the individual Defendants must be reviewed in conjunction with this Court's Order of August 23, 2007. By way of further answer, it is denied that any liability

exists on the part of the individual defendant in either a personal or official capacity.

D. LEGAL BACKGROUND

15. Denied as stated. The IDEA is a statute, and consequently, any characterization of same is denied as stated.

16. Denied as stated. The IDEA is a statute, and consequently, any characterization of same is denied as stated.

17. Denied as stated. The IDEA is a statute, and consequently, any characterization of same is denied as stated.

18. Denied as stated. Section 504 of the Rehabilitation Act of 1973 is a statute and consequently any characterization of same is denied as stated.

19. Denied as stated. Section 504 of the Rehabilitation Act of 1973 is a statute and consequently any characterization of same is denied as stated.

20. Denied as stated. The ADA is legal statute and consequently any characterization of same is denied as stated.

21. The Fourteenth Amendment of the United States Constitution is a statute and the interest protected there under are defined by said statute and the attendant case law and consequently any characterization of same is denied as stated.

22. Denied as stated. Title 42 U.S.C. Section 1983 is a statute and consequently any characterization of same is denied as stated.

23. Denied as stated. The viable causes of action in the Amended Complaint have been narrowed this Court's Order and Opinion of August 23, 2007. It is further denied that Plaintiff has any viable cause of action, under any statute that is currently remaining in this case as will be elucidated in the course of the discovery process.

24. Denied as stated. The viable causes of action in the Amended Complaint have been narrowed this Court's Order and Opinion of August 23, 2007. It is further denied that Plaintiff has any viable cause of action, under any statute that is currently remaining in this case as will be elucidated in the course of the discovery process.

25. This cause of action no longer survives as per the August 23, 2007, action.

26. Denied as stated. These are matters that remain viable in the litigation are controlled by the Order and Opinion of this Court dated August 23, 2007. It is denied that Plaintiff has any viable cause of action.

E. FACTS

27. Answering Defendants responses to the averments set forth elsewhere in the Answer to the Amended Complaint are incorporated herein by reference as if fully set forth at length.

28. Denied as stated.

29. Denied as stated. The IEP speaks for itself and is in writing.
30. Denied as stated.
31. Denied as stated.
32. Denied as stated.
33. Denied as stated.
34. Denied as stated.
35. Denied as stated.
36. Denied as stated.
37. Denied as stated.
38. Denied as stated.
39. Denied as stated.
40. Denied as stated.
41. Denied as stated.
42. Denied as stated.
43. Denied as stated.
44. Denied as stated.
45. Denied as stated.
46. Denied as stated.
47. Denied as stated.
48. Denied as stated.
49. Denied as stated.
50. Denied as stated.
51. Denied as stated.

52. Denied as stated.

53. Denied as stated.

54. Denied as stated.

55. Denied as stated.

56. Denied as stated.

57. Denied as stated.

58. Denied as stated.

59. Denied as stated.

60. Denied as stated.

61. Denied as stated.

62. Denied as stated.

63. Denied as stated.

64. Denied as stated.

65. Denied as stated.

66. Denied as stated.

67. Denied as stated.

68. Denied as stated.

69. Denied as stated.

70. Denied as stated.

71. Denied as stated.

72. Denied as stated.

Count I
Plaintiffs v. Michelle Adams, R.N.
Violation of IDEA

- 73. Dismissed as per August 23, 2007, Court Order.
- 74. Dismissed as per August 23, 2007, Court Order.
- 75. Dismissed as per August 23, 2007, Court Order.
- 76. Dismissed as per August 23, 2007, Court Order.
- 77. Dismissed as per August 23, 2007, Court Order.
- 78. Dismissed as per August 23, 2007, Court Order.
- 79. Dismissed as per August 23, 2007, Court Order.
- 80. Dismissed as per August 23, 2007, Court Order.
- 81. Dismissed as per August 23, 2007, Court Order.
- 82. Dismissed as per August 23, 2007, Court Order.
- 83. Dismissed as per August 23, 2007, Court Order.
- 84. Dismissed as per August 23, 2007, Court Order.
- 85. Dismissed as per August 23, 2007, Court Order.
- 86. Dismissed as per August 23, 2007, Court Order.
- 87. Dismissed as per August 23, 2007, Court Order.

Count II
Plaintiffs v. Defendant Carol Myers
Violation of IDEA

- 88. Dismissed as per August 23, 2007, Court Order.
- 89. Dismissed as per August 23, 2007, Court Order.
- 90. Dismissed as per August 23, 2007, Court Order.
- 91. Dismissed as per August 23, 2007, Court Order.
- 92. Dismissed as per August 23, 2007, Court Order.
- 93. Dismissed as per August 23, 2007, Court Order.

- 94. Dismissed as per August 23, 2007, Court Order.
- 95. Dismissed as per August 23, 2007, Court Order.
- 96. Dismissed as per August 23, 2007, Court Order.
- 97. Dismissed as per August 23, 2007, Court Order.
- 98. Dismissed as per August 23, 2007, Court Order.
- 99. Dismissed as per August 23, 2007, Court Order.
- 100. Dismissed as per August 23, 2007, Court Order.
- 101. Dismissed as per August 23, 2007, Court Order.

Count III
Plaintiffs v. Suzanne Ritchey
Violation of IDEA

- 102. Dismissed as per August 23, 2007, Court Order.
- 103. Dismissed as per August 23, 2007, Court Order.
- 104. Dismissed as per August 23, 2007, Court Order.
- 105. Dismissed as per August 23, 2007, Court Order.
- 106. Dismissed as per August 23, 2007, Court Order.
- 107. Dismissed as per August 23, 2007, Court Order.
- 108. Dismissed as per August 23, 2007, Court Order.
- 109. Dismissed as per August 23, 2007, Court Order.
- 110. Dismissed as per August 23, 2007, Court Order.
- 111. Dismissed as per August 23, 2007, Court Order.
- 112. Dismissed as per August 23, 2007, Court Order.
- 113. Dismissed as per August 23, 2007, Court Order.

114. Dismissed as per August 23, 2007, Court Order.

115. Dismissed as per August 23, 2007, Court Order.

Count IV
Plaintiffs v. Altoona Area School District
Violation of IDEA

116. Defendant hereby incorporates the reference its responses to the averments set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District, or its employees, agents or servants rise to a level constituting a viable cause of action.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

Count V
Plaintiffs v. Michelle Adams, R.N.
Violation of Rehabilitation Act of 1973

121. Dismissed as per August 23, 2007, Court Order.

122. Dismissed as per August 23, 2007, Court Order.

123. Dismissed as per August 23, 2007, Court Order.

124. Dismissed as per August 23, 2007, Court Order.

125. Dismissed as per August 23, 2007, Court Order.

126. Dismissed as per August 23, 2007, Court Order.

127. Dismissed as per August 23, 2007, Court Order.

Count VI
Plaintiffs v. Carol Myers

Violation of Rehabilitation Act of 1973

- 128. Dismissed as per August 23, 2007, Court Order.
- 129. Dismissed as per August 23, 2007, Court Order.
- 130. Dismissed as per August 23, 2007, Court Order.
- 131. Dismissed as per August 23, 2007, Court Order.
- 132. Dismissed as per August 23, 2007, Court Order.
- 133. Dismissed as per August 23, 2007, Court Order.
- 134. Dismissed as per August 23, 2007, Court Order.

Count VII
Plaintiffs v. Suzanne Ritchey
Violation of Rehabilitation Act of 1973

- 135. Dismissed as per August 23, 2007, Court Order.
- 136. Dismissed as per August 23, 2007, Court Order.
- 137. Dismissed as per August 23, 2007, Court Order.
- 138. Dismissed as per August 23, 2007, Court Order.
- 139. Dismissed as per August 23, 2007, Court Order.
- 140. Dismissed as per August 23, 2007, Court Order.
- 141. Dismissed as per August 23, 2007, Court Order.
- 142. Dismissed as per August 23, 2007, Court Order.

Count VIII
Plaintiffs v. Altoona Area School District
Violation of Rehabilitation Act of 1973

143. Defendant hereby incorporates the reference its responses to the averments set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District, or its employees, agents or servants rise to a level constituting a viable cause of action.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

Count IX
Plaintiffs v. Michelle Adams, R.N.
Violation of ADA

150. Dismissed as per August 23, 2007, Court Order.

151. Dismissed as per August 23, 2007, Court Order.

152. Dismissed as per August 23, 2007, Court Order.

153. Dismissed as per August 23, 2007, Court Order.

154. Dismissed as per August 23, 2007, Court Order.

155. Dismissed as per August 23, 2007, Court Order.

156. Dismissed as per August 23, 2007, Court Order.

Count X
Plaintiffs v. Carol Myers
Violation of ADA

157. Dismissed as per August 23, 2007, Court Order.

158. Dismissed as per August 23, 2007, Court Order.

159. Dismissed as per August 23, 2007, Court Order.

160. Dismissed as per August 23, 2007, Court Order.

161. Dismissed as per August 23, 2007, Court Order.

162. Dismissed as per August 23, 2007, Court Order.

163. Dismissed as per August 23, 2007, Court Order.

Count XI
Plaintiffs v. Suzanne Ritchey
Violation of ADA

164. Dismissed as per August 23, 2007, Court Order.

165. Dismissed as per August 23, 2007, Court Order.

166. Dismissed as per August 23, 2007, Court Order.

167. Dismissed as per August 23, 2007, Court Order.

168. Dismissed as per August 23, 2007, Court Order.

169. Dismissed as per August 23, 2007, Court Order.

170. Dismissed as per August 23, 2007, Court Order.

Count XII
Plaintiffs v. Altoona Area School District
Violation of ADA

171. Defendant hereby incorporates the reference its responses to the averments set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District, or its employees, agents or servants rise to a level constituting a viable cause of action.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

Count XIII
Plaintiffs v. All Defendants
Section 1983 Claims for Violations of Federal Law

178. Dismissed as per August 23, 2007, Court Order.

179. Dismissed as per August 23, 2007, Court Order.

180. Dismissed as per August 23, 2007, Court Order.

181. Dismissed as per August 23, 2007, Court Order.

182. Dismissed as per August 23, 2007, Court Order.

Count XIV
Plaintiffs v. Michelle Adams, R.N. Section 1983 Claims for Violations
of Substantive Due Process Rights Protected by the Fourteenth
Amendment

183. Dismissed as per August 23, 2007, Court Order.

184. Dismissed as per August 23, 2007, Court Order.

185. Dismissed as per August 23, 2007, Court Order.

186. Dismissed as per August 23, 2007, Court Order.

187. Dismissed as per August 23, 2007, Court Order.

188. Dismissed as per August 23, 2007, Court Order.

189. Dismissed as per August 23, 2007, Court Order.

190. Dismissed as per August 23, 2007, Court Order.

191. Dismissed as per August 23, 2007, Court Order.

192. Dismissed as per August 23, 2007, Court Order.

Count XV
Plaintiffs v. Carol Myers
Section 1983 Claims for Violations of Substantive Due Process
Rights Protected by the Fourteenth Amendment

193. Defendant hereby incorporates the reference its responses to the averments set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District, or its employees, agents or servants rise to a level constituting a viable cause of action.

194. Denied as stated.

195. Denied as stated.

196. Denied as stated.

197. Denied as stated.

198. Denied as stated.

199. Denied as stated.

200. Denied as stated.

201. Denied as stated.

202. Denied as stated.

Count XVI
Plaintiffs v. Suzanne Ritchey
Section 1983 Claims for Violations of Substantive Due Process
Rights Protected by the Fourteenth Amendment

203. Dismissed as per August 23, 2007, Court Order.

204. Dismissed as per August 23, 2007, Court Order.

205. Dismissed as per August 23, 2007, Court Order.

206. Dismissed as per August 23, 2007, Court Order.

207. Dismissed as per August 23, 2007, Court Order.

208. Dismissed as per August 23, 2007, Court Order.

209. Dismissed as per August 23, 2007, Court Order.

210. Dismissed as per August 23, 2007, Court Order.

211. Dismissed as per August 23, 2007, Court Order.

212. Dismissed as per August 23, 2007, Court Order.

Count XVII
Plaintiffs v. Altoona Area School District
Section 1983 Claims for Violations of Substantive Due Process
Rights Protected by the Fourteenth Amendment

213. Defendant hereby incorporates the reference its responses to the averments set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District, or its employees, agents or servants rise to a level constituting a viable cause of action.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

Count XVIII
Plaintiff Taylor v. Defendants
Violation of Civil Rights

222. Defendants hereby incorporates the reference its responses to the averments and allegations set forth in response to the Amended Complaint as if fully set forth herein at length. It is denied that the acts or omissions of Defendant School District's employees and agents or servants rise to a viable cause of action.

223. Denied.

224. Denied.

Count XIX
Plaintiff Taylor v. Defendants
Wrongful Death Action

225. Dismissed as per August 23, 2007, Court Order.

Count XX
Plaintiff v. Defendants
Survival Action

226. Dismissed as per August 23, 2007, Court Order.

Count XXI
Plaintiff v. Defendants
PUNITIVE DAMAGES

227. Denied.

228. Denied.

229. Denied.

WHEREFORE, Plaintiff's Complaint should be dismissed and no damages awarded and judgment be entered in favor of Defendants.

AFFIRMATIVE DEFENSES

230. Plaintiff's Complaint fails, in whole or in part, to state a claim against the Defendant upon which relief can be granted.

231. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

232. Plaintiff's claims relative to dismissal are barred by the failure to exhaust administrative remedies.

233. Plaintiff's claim are barred in whole or in part due to her failure to abide by the applicable statute of limitations.

234. Plaintiff is unable to establish a prima facie case based on the IDEA.

235. Plaintiff is unable to establish a prima facie case based on The ADA.

236. Plaintiff is unable to establish a prima facie case based on 42 U.S.C. Section 1983.

237. Plaintiff is unable to establish a prima facie case based on The Rehabilitation Act of 1973.

238. No unlawful acts were authorized, condoned or ratified by the individual Defendants either individually or while acting in their official or personal capacity.

239. No unlawful acts were authorized, condoned or ratified by the Defendant School District either individually or while acting in their official or personal capacity.

240. The individual Defendants have no liability under Section 1983 of the Civil Rights Act of 1964.

241. The individual Defendants have no liability under ADA.

242. The individual Defendants have no liability under the IDEA.

243. The individual Defendants have no liability under The Rehabilitation Act of 1973.

244. The Defendants are immune from suit and/or damages under the laws of the Commonwealth of Pennsylvania.

245. Plaintiff's claims fail in whole or in part relative to the defense of qualified immunity.

246. Plaintiff's claims fail in whole or in part for the inability to sustain the threshold burden of proof required to prove the claims as stated.

247. Plaintiff's claims fail in whole or in part for failure to bring a claim in which the Court subject matter jurisdiction.

248. Plaintiff's claims fail in whole or in part for lack of standing.

249. Plaintiff's claims are barred in whole or in part by Plaintiff's own failure to take affirmative steps to address minor child's health needs.

250. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate her damages.

251. Defendants reserve the right to assert any additional affirmative defenses as Plaintiff's claims are more fully disclosed through discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants respectfully requests that Judgment be entered in favor of Defendants and against Plaintiff.

Respectfully submitted:

ANDREWS & BEARD

/s/ Roberta Binder Heath
Pa. I.D. No. 50798
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SONYA TAYLOR, Administratrix of :
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Plaintiff :

vs. :

ALTOONA AREA SCHOOL DISTRICT, :
ALTOONA AREA SCHOOL BOARD, :
SUZANNE RITCHEY, CAROL MYERS, :
MICHELLE ADAMS, R.N., :
Defendants :
:

: Judge Gibson

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that the foregoing Answer of Defendants to Plaintiff's Amended Complaint with Affirmative Defenses has been served as follows on this the 4th day of **September, 2007**.

Regular U.S. Mail

Alan Krier, Esquire
JUBELIRER, CAROTHERS, KRIER & HALPERN
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ANDREWS & BEARD

/s/ Roberta Binder Heath, Esq.
Attorney for Defendants